

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

KAREN GUTHRIE, *Individually and on*
behalf of the estate of DONALD GUTHRIE,

Plaintiff,

v.

GREGORY BALL, M.D.,

Defendant.

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Case No. 1:11-cv-333-SKL

ORDER

Before the Court is “Motion in Limine #14 to Exclude All References to Lack of Informed Consent” filed by Defendant Gregory Ball, M.D. (“Defendant”) to prohibit Plaintiff Karen Guthrie, individually and on behalf of the Estate of Donald Guthrie (“Plaintiff”), from making any reference to a lack of informed consent as it relates to the prescribing and increasing of the fentanyl patch dosage. Defendant argues the motion should be granted on the grounds that any reference to informed consent is irrelevant as Plaintiff has made no claim based on informed consent in her complaint under Rule 8 of the Federal Rules of Civil Procedure [Doc. 124].

Essentially conceding she failed to allege a claim based on a lack of informed consent, Plaintiff filed a response [Doc. 181] stating that contemporaneously with her response, she filed or was filing a “Motion for Leave to Amend Complaint to Add a Claim for Lack of Informed Consent.” Plaintiff argued she should be granted leave to amend her complaint to add a claim for lack of informed consent based on the testimony of Defendant’s experts.

In his reply [Doc. 197], Defendant notes no motion to amend was ever filed. He then argues that even if Plaintiff attempts to file a motion to amend now or if the Court construes the response as a motion, which the Court declines to do, then any such amendment would be too late and too

prejudicial under Rules 15 and 16 of the Federal Rules of Civil Procedure.

As Plaintiff's complaint does not allege a claim based on a lack of informed consent, Defendant's "Motion in Limine #14 to Exclude All References to Lack of Informed Consent" to prohibit Plaintiff from making any reference at trial to a lack of informed consent [Doc. 124] is **GRANTED.**

SO ORDERED.

ENTER:

s/ Susan K. Lee
SUSAN K. LEE
UNITED STATES MAGISTRATE JUDGE